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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
Plaintiff,
13
v.
14 ROLAND HEATHINGTON,
15
Defendant.
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CASE NO. 2:20-CR-00008-TLN

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: April 23, 2020
TIME: 9:30 a.m.
COURT: Hon. Troy L. Nunley

17 This matter is set for status on April 23, 2020. On March 17, 2020, this Court issued General
18 Order 611, which suspends all jury trials in the Eastern District of California scheduled to commence
19 before May 1, 2020. This General Order was entered to address public health concerns related to
20 COVID-19.

21 Although the General Order addresses the district-wide health concern, the Supreme Court has
22 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
23 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
24 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
25 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
26 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
27 judge ordering and ends-of-justice continuance must set forth explicit findings on the record "either
28 orally or in writing").

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on April 23, 2020.
2. By this stipulation, defendant now moves to continue the status conference until June 18, 2020, at 9:30 a.m., and to exclude time between April 23, 2020, and June 18, 2020, under Local Code

1 T4.

2 3. The parties agree and stipulate, and request that the Court find the following:

3 a) The government has represented that the discovery associated with this case
4 includes approximately 60 pages of police reports, as well as the defendant's criminal history
5 sheet, body camera videos, and photographs. All of this discovery has been either produced
6 directly to counsel and/or made available for inspection and copying.

7 b) Counsel for defendant desires additional time to review this discovery, investigate
8 possible defenses or suppression issues, consult with his client, and negotiate a plea with the
9 government. Since the last status conference, it has been difficult for counsel to meet with his
10 client to review discovery in light of office restrictions due to the COVID-19 pandemic.

11 c) Counsel for defendant believes that failure to grant the above-requested
12 continuance would deny him/her the reasonable time necessary for effective preparation, taking
13 into account the exercise of due diligence.

14 d) The government does not object to the continuance.

15 e) In addition to the public health concerns cited by General Order 611 and
16 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
17 this case because counsel have been encouraged to telework and minimize personal contact to
18 the greatest extent possible. It will be difficult to avoid personal contact should the hearing
19 proceed.

20 f) Based on the above-stated findings, the ends of justice served by continuing the
21 case as requested outweigh the interest of the public and the defendant in a trial within the
22 original date prescribed by the Speedy Trial Act.

23 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
24 et seq., within which trial must commence, the time period of April 23, 2020 to June 18, 2020,
25 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
26 because it results from a continuance granted by the Court at defendant's request on the basis of
27 the Court's finding that the ends of justice served by taking such action outweigh the best interest
28 of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: April 16, 2020

McGREGOR W. SCOTT
United States Attorney

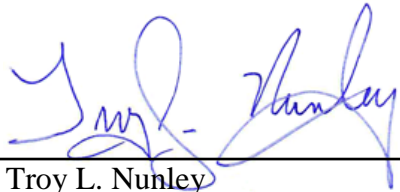
/s/ ROSS PEARSON
ROSS PEARSON
Assistant United States Attorney

Dated: April 16, 2020

/s/ JEROME PRICE
JEROME PRICE
Counsel for Defendant
ROLAND HEATHINGTON
(Authorized by email on April
16, 2020)

FINDINGS AND ORDER

IT IS SO FOUND AND ORDERED this 17th day of April, 2020.



Troy L. Nunley
United States District Judge